

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
CONRAD COOPER,

Petitioner,

-against-

UNITED STATES OF AMERICA,

Respondent.
-----x

USDS SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 9-20-12

11 Civ. 3054 (PKC)
04 Cr. 801 (PKC)

ORDER

P. KEVIN CASTEL, District Judge:

In a Memorandum and Order filed November 15, 2011, this Court denied Mr. Cooper's petition to vacate, set aside or correct his sentence pursuant to 28 U.S.C. § 2255, asserting that he was denied the effective assistance of counsel in violation of the Sixth Amendment. On December 29, 2011, Mr. Cooper filed a notice of appeal of that Memorandum and Order and the appeal remains pending in the United States Court of Appeals for the Second Circuit. Mr. Cooper now moves to amend his petition and also to vacate the judgment under Rule 60(b), Fed. R. Civ. P. Both motions are denied.

Unless a statute or rule provides otherwise, during the pendency of a facially-valid appeal, the district court lacks jurisdiction to vacate or modify the ruling—or amend the petition—which is the subject of the appeal. See Toliver v. County of Sullivan, 957 F.2d 47, 49 (2d Cir. 1992).

CONCLUSION

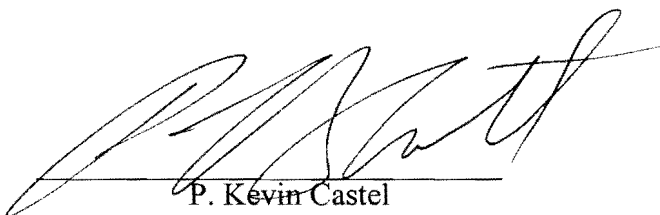
The motions (DE #10 & 11; 11 Civ. 3054) are DENIED.

Petitioner has not made a substantial showing of the denial of a constitutional right and, accordingly, a certificate of appealability will not issue. 28 U.S.C. § 2253; see Lozada v. United States, 107 F.3d 1011, 1016-17 (2d Cir. 1997), abrogated on other grounds by United

States v. Perez, 129 F.3d 255, 259-60 (2d Cir. 1997). This Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith and in forma pauperis status is denied. See Coppedge v. United States, 369 U.S. 438, 444-45 (1962).

SO ORDERED.

Dated: New York, New York
September 20, 2012



P. Kevin Castel
United States District Judge